190 (N. J. Eq.). The testator's intent at the time of drafting the residuary clause was to bequeath by it not any particular property, but whatever property might for any reason be undisposed of at his death. The fact that the residuum will be increased by his own subsequent acts which are not for that exclusive purpose, can furnish no reason for refusing to give effect to his intent. *Stubbs* v. *Sargon*, 3 Myl. & C. 507. For such a principle would prevent the devising of all after-acquired property.

BOOK REVIEWS.

COMPARATIVE LEGAL PHILOSOPHY. Applied to Legal Institutions. By Luigi Miraglia. Translated by John Lisle. The Modern Legal Philosophy Series, Vol. III. Boston: Boston Book Co. 1912. pp. xl, 793.

This volume is intended as an historical introduction to the various schools of continental legal philosophy, but it is only fair to the author to state that he himself, in the last Italian edition, entitled it simply Philosophy of Law. For the book is not either a history of legal philosophy, nor a *systematic* survey of the diverse influential views that have been entertained on the chief topics of legal philosophy. It is simply a book on the philosophy of law, unusually full of references and summaries of the views of different writers; but it cannot be claimed that Miraglia displays a keen sense for the historical or the systematically important. There are, for instance, very few references to the main stream of European legal thought that begins in patristic literature and culminates in Suarez or Calvin (neither of whom are even mentioned); and in giving the modern views of corporations six pages are devoted to Giorgi but not a word is said about Gierke! The reader who wants to see for himself how typical these instances are, need only glance through the index and note the relative frequency with which different writers are quoted. As Italian thought, however, is not as well known in America as it ought to be, it is the reviewer's duty to point out that the same historical disproportion characterizes Miraglia's references to Italian writers. Thus Rosmini, who is quoted so frequently, has, in spite of the saintliness of his character and the prodigious bulk of his writings, hardly had any more influence on Italian thought than Gioberti who is barely mentioned, or even than Count Mamiani, the protagonist of the national Italian School of Philosophy, who is not mentioned at all.[1]

The volume before us consists of three distinct parts: the Introduction (pp. 1–86), Book I (pp. 87–318), and Book II (pp. 319–773). The number of pages in each section fairly represents the relative importance of the subject matter as treated by Miraglia.

The introduction attempts a summary of the history of philosophy; but it is the reviewer's unpleasant duty, as a teacher of philosophy, to state bluntly that Professor Miraglia's knowledge of the history of general philosophy is not worthy of serious respect. It is obviously acquired at second hand, and, — apart from the absence of the historical sense, which shows itself in giving Spedalieri as much space as Hobbes and Locke combined, — is full of positive misinformation (see, *e. g.*, his references to Duns Scotus, p. 11, Cabanas [Cabanis?], p. 37, or neo-criticism, pp. 85–86). The layman in philosophy will do well to omit this introduction altogether, and depend for his knowledge of the his-

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[1] One of Count Mamiani's books, on the Law of Nations, was translated into English by Lord Acton.

tory of general philosophy either on the ordinary text-books on the subject, or on Berolzheimer's scholarly and remarkably clear book in this series.

Book I deals, in the main, with the ground covered by Korkunov's book in this series, namely, the general theory of law. It is not unfair to add that Miraglia compares as unfavorably with Korkunov in point of clear incisive thinking, as he does with Berolzheimer in point of historical perception. The book reads very much like a student's note-book, full of short abstract summaries of the views of different philosophers, which interrupt rather than continue the author's argument. Obviously much learning is not always conducive to clear thinking. A curious instance of Miraglia's undigested learning occurs when, under the influence of Spencer, he tells us dogmatically (p. 200), "it seems indubitable that the first forms of law must have been the most simple and abstract, that is, the least complicated," but on page 208, under the influence of Maine, he tells us that of early law an "extraordinarily large part" is "devoted to procedure," which "presupposes private law, public law, and penal law and is, therefore, the most complex" (p. 206).

A great many good things are said, in spots, about general philosophy, and some good things about law, but there is no coherent doctrine or real bridge between the two; for Miraglia has no clear standpoint of his own, — as, indeed, Mr. Kocourek, in his able and generous introduction, is forced to admit. Vico, Hegel, Rosmini, and Spencer are inextricably confused.

A good deal of suggestive material occurs, especially in chapters 8 and 9, which give the relation of law to morals, social science, economics, and politics. While law must not be confused with morals, the two cannot be separated. "It is not true that law takes no account of intent, because it considers it in contracts, wills, constitutions, and crimes. Law does not consider the intent except as it is shown by the act, and does not contemplate it of itself as morals do" (p. 248). As legal rules are principles of social action it is not possible to work out a reasonable system of law without sociology (p. 264); at the same time no sociology can be satisfactory, unless it takes into account the considerations with which philosophy of law concerns itself. Similarly the just proportion between conflicting economic claims is to be adjusted by the science of politics, but as this can be done only in the light of a sound philosophy of law, the latter, it would seem, must be regarded as an integral part of the former.

Book II, entitled Private Law, aims to extend philosophical thought to various legal institutions, mainly the law of property. Private law, according to Miraglia, must include five categories, namely, the law of property, personality, obligation, family, and inheritance. The distinctive trait of private law, we are told, is that "it has essentially to do with rights of a financial value" (p. 202). On the other hand we are also assured that "there are ethico-juridical relations which have nothing to do with wealth, interest, and utility as objects, and which cannot be given a material valuation" (p. 284). As marital and certain personal relations are obviously of the latter kind, Miraglia should, in consistency, have excluded them from the realm of private law. Of distinctly philosophical or systematic disadvantage is Miraglia's exclusion of civil procedure from the realm of private law; for the distinction between different legal conceptions is frequently indiscernible except in the light of the different procedures which they entail. Similar objection may be made to the view which classifies the conflict of laws as private international law.

When confronted with the relatively hard and concrete facts of legal institutions, Miraglia's cloudy eclecticism is forced into some definiteness. The scoffer may object that there is, in this portion of the volume, more of sociology and jurisprudence than of philosophy; but this in no way detracts from its extreme usefulness. After all, if an American philosophy of law is ever to be worked out it will, in all probability, be not by deduction from what are gener-

ally known as philosophical principles, but rather by reflection on such vexed problems as freedom of contract, the personality of corporations, etc. For this reason, this book on Private Law, forming by itself a respectable volume of over 450 pages, is one of the most useful portions of the whole series. Miraglia's handling of the subject of "inherent" rights is based on a somewhat antiquated individualistic or atomistic philosophy, and his treatment of the problem of the family is based on what is now recognized as inadequate anthropologic information; but the essential problems, from which a satisfactory philosophy of law must begin, are stated in a way to compel the thoughtful reader to further reflection. May the book find many such readers!

The translation seems to have been carefully made. The use of the word *consideration*, however, as the equivalent of *causa* in the continental law of contract, is open to objection. In a way this inaccuracy is rather useful, for it tends to break down the widespread fallacy that there is nothing in continental law corresponding to the common-law doctrine of consideration — a fallacy repeated by such a careful writer as Markby. The fact, however, remains that the continental doctrine of *causa civilis* is in its origin and its functioning not the same as *consideration*. A brief note by the editorial committee might have cleared the matter up for the unwary reader.

As the aim of the series is to put the American student in touch with the best continental literature on the subject, one can justly complain that this volume is not sufficiently edited. Miraglia quotes or refers to many authors without mentioning the names of the books involved, and when the latter are mentioned no reference is made to page or chapter. Thus on p. 121 we are informed of a certain interesting view of Kerbaker, but we are not referred to any particular work. Surely the American reader cannot be presumed to be familiar with Kerbaker, an Italian philologist! As the last Italian edition of Miraglia's book is now a decade old, a few references to more recent literature, *e. g.*, the mere mention of Saleilles' La Personalité Juridique, at the end of the chapter on artificial persons, would have been very helpful, and would have brought the book a little more up to date.

There is an elaborate but somewhat mechanically constructed index. The compiler of it does not seem, for instance, to be aware of the identity of St. Thomas and Aquinas, but makes different entries under these separate headings.

With all its faults this book is heartily recommended as a mine from which the patient and critical student may extract a vast deal of information and suggestion. It is to be hoped that the student's task may be made easier soon in a second edition. M. R. C.

THE ORIGIN OF THE ENGLISH CONSTITUTION. By George Burton Adams. New Haven: Yale University Press. London: Henry Frowde, Oxford University Press. 1912. pp. xii, 378.

The thesis of this book, which is an amplification, with important additions, of Professor Adams's earlier articles, is that the principle of the English constitution, that there is a body of law above the king, was derived directly from feudalism, and "that it was the work of the Great Charter of 1215 to transfer it from that system then falling into decline to the newer governmental system just beginning to be formed" (p. 167). The feudal principle enforced by Magna Carta, limiting the authority of the king, Professor Adams finds in the fact of contract. The feudal contract bound both parties, the sovereign as well as the humblest vassal. In Chapter V, which is new, he examines at considerable length the clauses of the Charter and concludes that it is essentially a document of feudal law, pledging the king to respect feudal rights, which